



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 3 0 2004

Robert K. Kelner, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

RE: MUR 5390

Dear Mr. Kelner:

On September 14, 2004, the Federal Election Commission found that there is reason to believe your client, the Federal Home Loan Mortgage Corporation (a/k/a Freddie Mac), violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred


Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

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5 RESPONDENT: Federal Home Loan Mortgage Corporation MUR 5390
6 (a/k/a Freddie Mac)
7

8 **I. INTRODUCTION**
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10 Public Citizen filed a complaint with the Federal Election Commission ("the
11 Commission") on October 16, 2003, alleging that Robert Mitchell Delk ("Mitch Delk"),
12 Senior Vice President of Government Relations at the Federal Home Loan Mortgage
13 Corporation ("Freddie Mac") between January 1999 and March 2004, made excessive
14 contributions in violation of the Federal Election Campaign Act of 1971, as amended
15 ("the Act"), in connection with fundraising dinners he hosted at Ser Inc. (d/b/a Galileo
16 Restaurant, hereinafter "Galileo") during the 2001-2002 election cycle. The complaint
17 further alleges that Epiphany Productions, Inc., a Freddie Mac vendor, made corporate
18 contributions in violation of the Act by failing to make reasonable efforts to collect
19 payments from campaign committees for organizational services it rendered in connection
20 with the fundraising dinners.

21 The complaint does not make any allegation of wrongdoing with respect to
22 Freddie Mac. However, in the wake of the complaint and the public disclosure of
23 accounting improprieties within the company, discussed *infra*, Freddie Mac submitted to
24 the Commission *sua sponte* a document entitled "Summary of Freddie Mac Campaign
25 Finance Review" ("Submission"). The Submission explains that "[a]s part of its efforts
26 to reestablish Freddie Mac's credibility, the company has committed to demonstrating its
27 compliance with all laws and regulations that apply to its activities." Without drawing

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any legal conclusions, the Submission sets forth information obtained during a review by outside legal counsel of the campaign finance activities of Freddie Mac personnel, including, but not limited to, the fundraising dinners hosted by Mitch Delk at Galileo.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Freddie Mac is a stockholder-owned corporation chartered by the U.S. Congress to provide a continuous and low-cost source of capital to finance America's housing.¹ Freddie Mac is subject to congressional oversight by the House Committee on Financial Services. The corporation is also subject to oversight by the U.S. Department of Housing and Urban Development (HUD) and the Office of Federal Housing Enterprise Oversight (OFHEO).

Freddie Mac and its employees and vendors engaged in a myriad of campaign fundraising activities. As considered in turn below, these activities included:

- (1) campaign fundraising events sponsored by Freddie Mac's in-house lobbyists and subsidized in part by Freddie Mac, which apparently paid certain related expenses;
- (2) Freddie Mac vendors assisting Freddie Mac lobbyists in organizing campaign fundraising events benefiting campaign committees and, in some instances, failing to promptly charge the committees for their services; (3) corporate facilitation of individual earmarked contributions by Freddie Mac; and (4) a Freddie Mac contribution of \$150,000 to the Republican Governors Association.

¹ This description was taken from Freddie Mac's website, located at <http://www.freddiemac.com/orate/whoweare/regulation/oversight.html> (visited April 15, 2004).

B. Freddie Mac Payments for Expenses
Related to the Delk Fundraising Dinners

1. Corporate Reimbursements

The Act prohibits corporations from making contributions or expenditures in connection with any Federal election or for any officer or director of a corporation to consent to such contributions or expenditures. *See* 2 U.S.C. § 441b(a). The term “contribution” includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2).

Between 1999 and May 2003, Mitch Delk sponsored campaign fundraising dinners at Galileo for the benefit of Members of Congress who served on the House and Senate Committees that oversee Freddie Mac. According to Freddie Mac, the scope of its internal investigation included an examination of whether Freddie Mac paid any of the expenses associated with Mr. Delk’s fundraising dinners at Galileo, either directly or through reimbursement to Mr. Delk. Freddie Mac reportedly reviewed expense records between 1999 through 2003, the period during which Mr. Delk hosted various events at Galileo. These events included the campaign fundraising dinners discussed *supra*, which Freddie Mac described as “individual volunteer activity,” as well as separate, company-sponsored events, which Freddie Mac explained were unrelated to campaign fundraising. According to Freddie Mac, this examination revealed two instances in which “it is possible” the company reimbursed Mr. Delk for “individual volunteer fundraising events” at Galileo.

Specifically, Galileo reimbursed Mr. Delk for the cost of fundraising dinners held on March 16 and March 23, 1999. Freddie Mac issued reimbursements for these events

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1 in December 1999 in the total amount of \$5,974.34 (\$3,161.38 + \$2,812.96). According
2 to Freddie Mac, Mr. Delk did not provide invoices from Galileo for these two fundraising
3 events, and Mr. Delk indicated that he does not recall who paid for the events. Some of
4 the individuals listed on the expense report as attending the March 23, 1999 dinner are
5 reflected in disclosure reports as having made a contribution to the PAC for which the
6 fundraiser was held near the date of the fundraising dinner, suggesting that these events
7 were campaign fundraisers.

8 In addition, Freddie Mac paid a total of \$360 in taxi cab expenses for Mr. Delk's
9 travel to and from campaign fundraising dinners between April 2000 and February 2003.
10 Specifically, in its Submission, Freddie Mac identified 18 occasions where Mr. Delk
11 submitted expense reports and received reimbursements in the amount of \$20 for a
12 taxicab to and from Galileo on the evening of a campaign fundraising dinner.

13 **2. Payments to Epiphany Productions, Inc.**

14 Freddie Mac's internal investigation also revealed payments made by Freddie Mac
15 to Epiphany Productions, Inc. ("Epiphany") for organizational services related to Mr.
16 Delk's fundraising dinners at Galileo. The organizational services provided by Epiphany
17 in connection with the fundraising dinners included developing invitation lists with Mr.
18 Delk's input, distributing the invitations, contacting Galileo to schedule the event,
19 keeping track of RSVPs, and collecting the contribution checks and delivering them to
20 the campaign committees.

21 According to Freddie Mac, the company retained Epiphany for political
22 "consulting services" in June 1999, one month after Mr. Delk began working with
23 Epiphany in connection with the fundraising dinners at Galileo. Freddie Mac stated that

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1 Epiphany also provided organizational services related to corporate events. Both Freddie
2 Mac and Epiphany maintain that Epiphany's activities relating to the fundraising dinners
3 were separate from Freddie Mac's retention of Epiphany.

4 Nevertheless, in August of 2002, Mr. Delk and Freddie Mac's outside election
5 law counsel discovered that Epiphany had improperly billed Freddie Mac for expenses
6 related to the fundraising dinners held at Galileo in March 1999, principally for
7 "broadcast fax" services associated with the distribution of invitations to the fundraisers.
8 These invoices were apparently reviewed and approved by Mr. Delk. On August 8, 2002,
9 Epiphany sent a check in the amount of \$22,512 to Freddie Mac to refund the expenses
10 erroneously billed to Freddie Mac. Subsequently, on February 5, 2004, following a
11 request from Freddie Mac's outside counsel that Epiphany refund additional line item
12 charges that could not be confirmed as related to Freddie Mac's corporate activities,
13 Epiphany sent another check refunding a total of \$2,221.06.² The Submission notes that
14 there are two Epiphany invoices with charges in the amount of \$442.54 for which counsel
15 is in the process of requesting either an explanation or refund from Epiphany.

16 **3. Conclusion**

17 Based on the foregoing payments by Freddie Mac for fundraising in connection
18 with federal elections, there is reason to believe that the Federal Home Loan Mortgage
19 Corporation violated 2 U.S.C. § 441b.

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² A copy of the front of the refund checks is attached to the Summary. However, the Submission does not include a copy of the back of the checks or other evidence that the checks were negotiated.

**C. Other Fundraising Activity of Freddie Mac
Employees and Vendors**

1. Clarke Camper and The Leger Co., Inc.

In addition to the fundraisers at Galileo, the internal investigation conducted by Freddie Mac examined what the company describes as "other volunteer fundraising events" hosted by Freddie Mac personnel. According to Freddie Mac, this examination uncovered five fundraising events in 2003 hosted by Clarke Camper, then Vice President of Government Relations, with the assistance of the Leger Co., Inc., a vendor with whom Freddie Mac apparently had a "consulting agreement."³

According to Freddie Mac, Mr. Camper and Liz Leger of the Leger Co., Inc. hosted five fundraising meals between January and May 2003, holding three of these events in a Freddie Mac conference room and two in restaurants. According to Freddie Mac, Mr. Camper and Ms. Leger stated that they compiled invitation lists together, based mainly on contact information provided to Ms. Leger by Mr. Camper, that Mr. Camper "generally" sent out invitations to the events from his personal e-mail account, that, on at least one occasion, a Freddie Mac employee who "work[ed] with" Mr. Camper in Government Relations circulated an invitation to one of the fundraising events via his personal e-mail account and apparently kept track of some RSVPs for the event, and that "certain Freddie Mac" personnel made the arrangements for the use of a conference room in connection with the fundraising activity. According to Freddie Mac, Mr. Camper stated that in each instance either he or the benefiting campaign committee paid for the food, and both Mr. Camper and Ms. Leger stated that the services rendered by Ms. Leger

³ Freddie Mac did not provide a copy of its "consulting agreement" with the Leger Co., Inc. or indicate when the agreement was entered.

1 in connection with Mr. Camper's fundraisers were not part of the Freddie Mac
2 "consulting agreement" with the Leger Co., Inc. According to Freddie Mac, Mr. Camper
3 and Ms. Leger stated that after each event, Ms. Leger would issue an invoice to the
4 benefiting campaign for \$250 to cover the cost of Ms. Leger's services in planning and
5 executing the event.

6 Nevertheless, in its Submission, Freddie Mac revealed that in an invoice dated
7 March 26, 2003, covering the period February-March 2003, The Leger Co., Inc. charged
8 Freddie Mac \$2,902.42 for dishes and related items described as "Catering Acquisition
9 Expenses" to enable the Government Relations group to hold meals in its conference
10 room. According to Freddie Mac, at that time, Freddie Mac was considering forming a
11 PAC that would host events in the conference room. Significantly, however, Freddie
12 Mac did not deny that it purchased the dishes for use in connection with the
13 Camper/Leger fundraising events and the Leger Co.'s acquisition of the dishes occurred
14 during the time period that Ms. Leger was assisting Mr. Camper in hosting fundraisers,
15 suggesting that the dishes may have been purchased for use in connection with the
16 fundraising meals. Based on the foregoing, there is reason to believe that Freddie Mac
17 violated 2 U.S.C. § 441b.

18 The use of a Freddie Mac conference room for the fundraising meals seems
19 occasional, isolated or incidental and, therefore, permissible under the Commission's
20 regulations. The Act provides for specific exemptions from the definition of contribution
21 or expenditure, thereby setting forth permissible bounds of corporate activity in
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1 connection with Federal elections. 2 U.S.C. § 441b(b)(2). For example, stockholders and
2 employees of a corporation may, subject to the rules and practices of the corporation,
3 make occasional, isolated, or incidental use of a corporation's facilities for individual
4 volunteer activity in connection with a Federal election and will be required to reimburse
5 the corporation only to the extent that the overhead or operating costs of the corporation
6 are increased. 11 C.F.R. § 114.9(a). "Occasional, isolated, or incidental use" generally
7 means, when used by employees during working hours, an amount of activity during any
8 particular work period which does not prevent the employee from completing the normal
9 amount of work which that employee usually carries out during such work period.
10 11 C.F.R. § 114.9(a). But any such activity which does not exceed one hour per week or
11 four hours per month, regardless of whether the activity is undertaken during or after
12 work hours, shall be considered as occasional, isolated, or incidental use of the corporate
13 facilities. *Id.* The use of a Freddie Mac conference room on three isolated occasions
14 appears to fall within this exemption.

15 Finally, Freddie Mac further revealed in its Submission that in one instance;
16 Freddie Mac's production facilities were used to prepare two signs for an "individual
17 volunteer fundraising event" hosted by Mr. Camper. According to Freddie Mac, the only
18 incremental cost to the corporation for preparing these signs appears to have been the cost
19 of the paper and ink, which Freddie Mac states would have been minimal.

20 Any person who uses the facilities of a corporation to produce materials in
21 connection with a Federal election is required to reimburse the corporation within a
22 commercially reasonable time for the normal and usual charge for producing such
23 materials in the commercial market. 11 C.F.R. § 114.9 (c). While Freddie Mac

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1 acknowledged the use of its production facilities to prepare two signs for campaign
2 fundraising activity, Freddie Mac did not indicate that it was reimbursed the normal and
3 usual charge for producing such materials in the commercial market, however minimal, in
4 accordance with 11 C.F.R. § 114.9(c). Thus, based on the use of Freddie Mac's
5 production facilities without reimbursement, there is reason to believe Freddie Mac
6 violated 2 U.S.C. § 441b.

7 2. Clarke Camper and Progressive Strategies, Inc.

8 In its Submission, Freddie Mac revealed that Clarke Camper engaged in
9 fundraising activity with another Freddie Mac vendor, Progressive Strategies, Inc., with
10 which Freddie Mac had a "consulting agreement." Specifically, Freddie Mac submitted
11 documentary evidence that indicates that Scott Freda, a Progressive Strategies employee,
12 solicited contributions to a candidate in conjunction with Mr. Camper in or around March
13 2002. This documentary evidence, which Freddie Mac attached to its Submission, is an
14 email response from Mr. Freda to an earlier email message from Mr. Camper, in which
15 Mr. Camper stated:

16 hi scott, i'm finally getting a chance to see where we are on reed. can you
17 remind me who your participants were and the \$ amounts? thanks! cdc
18

19 Mr. Freda's email response provides what appear to be contributor names, the names of
20 their employers, and the amounts they contributed to the campaign of Senator Jack Reed.

21 Solicitations for contributions to clearly identified candidates are express
22 advocacy and would, therefore, constitute impermissible corporate
23 contributions/expenditures if the solicitations are attributable to a corporation. *See*
24 *Federal Election Commission v. Christian Coalition*, 52 F.Supp.2d 45, 62 (1999). While

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1 the Commission's regulations exempt from the definition of "contribution" and
2 "expenditure" communications by a corporation to its restricted class, which includes its
3 stockholders and executive or administrative personnel and their families, *see* 2 U.S.C.
4 § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and 114.3, Freddie Mac has not asserted that
5 Mr. Freda's solicitations were directed to members of its restricted class, and a review of
6 disclosure reports reveals that the individuals identified in Mr. Freda's email were not
7 Freddie Mac employees.⁴ Thus, if Mr. Freda's apparent solicitations beyond Freddie
8 Mac's restricted class can be attributable to Freddie Mac, any payments by Freddie Mac
9 related to the solicitations would be another basis for finding reason to believe that
10 Freddie Mac made corporate contributions in violation of 2 U.S.C. § 441b.

11 According to Freddie Mac, Mr. Camper maintains that Mr. Freda solicited the
12 contributions in his individual capacity and not as part of Freddie Mac's retention of
13 Progressive Strategies. However, Freddie Mac submitted no information to support this
14 contention and there has been no information presented to suggest that Mr. Camper and
15 Mr. Freda had a relationship outside of Mr. Freda's work with Progressive Strategies.
16 Further, along with its Submission, Freddie Mac provided a copy of its "consulting"
17 agreement with Progressive Strategies, Inc. The agreement states, *inter alia*, that
18 Progressive Strategies "working with the staff of Freddie Mac will provide general
19 support, advice and guidance on fundraising and program work" Thus, there is reason
20 to believe that in soliciting contributions with Mr. Camper, Mr. Freda was acting within

⁴ Under the Act, "executive or administrative personnel" means individuals employed by the corporation who are paid on a salary basis, and who have policymaking, managerial, professional or supervisory responsibilities. 2 U.S.C. § 441b(b)(7). See 11 C.F.R. § 114.1(c). The Commission's regulations define stockholder as "a person who has a vested interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends." 11 C.F.R. § 114.1(h).

1 the scope of the Freddie Mac/Progressive Strategies agreement. Based on the foregoing,
2 there is reason to believe that Freddie Mac violated 2 U.S.C. § 441b.

3 **3. Corporate Facilitation of Contributions**

4 In its Submission, Freddie Mac described a practice by Mr. Delk and Mr. Camper
5 of soliciting individual earmarked contributions from Freddie Mac executives, which
6 were collected and transmitted by Freddie Mac personnel to recipient campaign
7 committees. According to Freddie Mac, both Mr. Delk and Mr. Camper discussed
8 individual contributions to federal candidates with senior Freddie Mac executives,
9 including the Chief Executive Officer ("CEO") and General Counsel, and forwarded the
10 contributions to the recipient committees, sometimes with the assistance of Freddie Mac
11 personnel. Freddie Mac describes these activities as "personal activity" and maintains
12 that all of the executives solicited for contributions, which were solicited between
13 September 1998 and July 2002 and totaled \$41,500, were part of Freddie Mac's restricted
14 class.

15 A corporation may make partisan communications to its restricted class, which
16 includes its stockholders and executive or administrative personnel and their families.
17 See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and 114.3; see also footnote 7.
18 As such, a corporation may solicit or suggest in a communication sent to its restricted
19 class that they contribute to a particular candidate or committee; however, a corporation
20 (including officers, directors or other representatives acting as agents of corporations)
21 may not facilitate the making of the individual's contribution to the candidate or act as a
22 conduit for individual contributions. See 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii).

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1 Examples of facilitating the making of contributions include: (1) officials or employees
2 of the corporation ordering subordinates or support staff (who therefore are not acting as
3 volunteers) to plan, organize or carry out the fundraising project as a part of their work
4 responsibilities using corporate resources; and (2) providing materials for the purpose of
5 transmitting or delivering contributions, such as stamps, envelopes addressed to a
6 candidate or political committee other than the corporation's or labor organization's
7 separate segregated fund, or other similar items which would assist in transmitting or
8 delivering contributions, but not including providing the address of the candidate or
9 political committee. *See* 11 C.F.R. § 114.2(f)(2)(ii).

10 According to Freddie Mac, Ella Lee, the assistant to Leland Brendsel, the CEO of
11 Freddie Mac, "relayed messages" between Mr. Delk, Mr. Camper and Mr. Brendsel, as
12 well as other executives concerning individual contributions to federal candidates.
13 Freddie Mac further revealed that Ms. Lee collected contributions from the executives
14 and transmitted them to the candidate's campaign or to Mr. Delk or Mr. Camper, who
15 then transmitted the contributions to the campaigns. At times, Ms. Lee arranged for a
16 courier service paid by Freddie Mac to deliver the checks to the campaigns. Freddie Mac
17 did not assert that Ms. Lee was acting as a volunteer in carrying out these activities.
18 Documents provided by Freddie Mac indicate that \$5,000 in individual contributions was
19 transmitted to campaign committees by courier paid for by Freddie Mac between
20 September and November 2001. Based on the foregoing, there is reason to believe
21 Freddie Mac violated 2 U.S.C. § 441b by facilitating campaign contributions.

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**D. Freddie Mac's \$150,000 Contribution to the
Republican Governors Association**

In its Submission, Freddie Mac disclosed that in October 2002, Freddie Mac contributed \$150,000 to the Republican Governor's Association ("RGA"). At that time, the RGA was a part of the Republican National Committee. According to Freddie Mac, the RGA misreported the contribution as a personal contribution from Mr. Delk, and Mr. Delk and Freddie Mac's outside counsel became aware of the misreporting "a number of months later." Freddie Mac's counsel reportedly contacted the RGA and learned that, in addition to the misreporting of the source of the contribution, the RGA had erroneously deposited the contribution into a non-building fund account. According to Freddie Mac, in June 2003, the RGA refunded the contribution to Freddie Mac.

The Act prohibits "any corporation organized by authority of any law of Congress" from making "a contribution or expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person" from knowingly accepting or receiving "any contribution prohibited by this section." *Id.* For purposes of Section 441b, the terms "contribution" and "expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in" Section 441b.

Importantly, the Act excludes from the definition of contribution:

any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party *specifically designated* to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any

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1 candidate in any particular election for Federal office.

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3 2 U.S.C. § 431(8)(B)(viii) (emphasis added). This is the so-called "building fund
4 exemption." *See, e.g.*, Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14,
5 and 1983-8. Funds falling under the building fund exemption are exempt from the
6 prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); *see also* Advisory
7 Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore,
8 national and state committees of political parties may accept donations covered by the
9 building fund exemption from corporations, including those like Freddie Mac, which are
10 organized by authority of any law of Congress.⁵ *See id.*

11 In its Submission, Freddie Mac asserts that its intention was to make a permissible
12 building fund contribution. According to Freddie Mac, Mr. Delk stated that the \$150,000
13 contribution was part of a single \$250,000 commitment of support that he made to the
14 RGA on behalf of Freddie Mac; the other \$100,000 had been contributed by Freddie Mac
15 in March 2002 and was properly deposited by the RGA into the building fund account.
16 According to Freddie Mac, Mr. Delk further stated that he communicated to the RGA,
17 through Wayne Berman, the Honorary Finance Chairman of the RGA, his intention that
18 the contributions were to be deposited into the building fund account.

19 Significantly, Freddie Mac had an internal procedure, which addressed building
20 fund contributions and was established in 1994 to ensure compliance with the Act. The
21 procedure provided for "a cover letter that notifies the recipient that the funds are to be
22 used only for building fund purposes in accordance with" the Act. Further, the procedure

⁵ The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81 (2002), which took effect November 6, 2000, just days after Freddie Mac's \$150,000 contribution, removed the building fund exemption for national party committees.

1 established a "designated compliance officer responsible for reviewing requests under"
2 the corporate procedure to ensure compliance with the Act.⁶

3 Attached to its Submission, Freddie Mac provided copies of documentation
4 related to the two Freddie Mac contributions. For the first contribution of \$100,000,
5 which was made payable to the "Republican Governors Association Eisenhower Building
6 Fund," this documentation included a copy of the required cover letter that accompanied
7 the contribution notifying the recipient that the funds only for building fund purposes. In
8 contrast, the documentation for the \$150,000 contribution, which was made payable only
9 to the "Republican Governors Assn," did not include a copy of the required cover letter.

10 While Freddie Mac attached to its Submission a copy of its corporate procedure
11 regarding contributions, Freddie Mac does not address the existence of its corporate
12 procedure in its Submission or address whether that procedure was followed in this
13 instance. Rather, Freddie Mac maintains that "the information makes clear that Freddie
14 Mac's intention was to make a permissible building fund contribution," noting that Mr.
15 Delk explained that he communicated to the RGA, through Wayne Berman, his intention
16 that the contributions were to be deposited in the building fund.

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⁶ Freddie Mac's corporate procedure does not name a "designated compliance officer," but instead states that "the Senior Deputy General Counsel, Corporate Affairs, or his/her designee, shall review the request [for building fund expenditures] to determine whether it complies with the Act." However, documents submitted by Freddie Mac suggest that Bruce S. Oliver, Freddie Mac's Associate General Counsel for Mortgage Law, served in this capacity with respect to Freddie Mac's earlier \$100,000 contribution to the RGA. Specifically, Freddie Mac submitted a copy of the required cover letter with respect to its earlier \$100,000 contribution, which contained a statement that the corporation's procedure was followed. The statement was signed by Mr. Oliver.

On June 11, 2004, this Office received from Mr. Delk's counsel an affidavit sworn to by Wayne L. Berman. Mr. Berman states that during a telephone conversation in which Mr. Delk agreed to seek a contribution of \$250,000 from Freddie Mac to support the RGA, Mr. Delk reminded him that a Freddie Mac contribution was required to be used to support the RNC building fund. Mr. Berman further avers that he received the first installment of the Freddie Mac contribution from Mr. Delk with a letter instructing the RGA to apply the contribution to the appropriate accounts, and that he forwarded the check and the letter to Susan Nelson, the RGA Finance Director, consistent with his normal practice. Mr. Berman further states that in October 2002, Mr. Delk gave him a Freddie Mac check for the remainder of the contribution; that the check was accompanied by a letter with instructions exactly like the letter that accompanied the first portion of the contribution; and that he forwarded the check and the letter to Ms. Nelson. Notably, however, neither Mr. Berman nor Freddie Mac produced a copy of the letter that purportedly accompanied the \$150,000 contribution. Finally, Mr. Berman states that after handing him the contribution, Mr. Delk reiterated that the contribution was to support the RNC building fund only.

While Mr. Berman states that the \$150,000 was specifically designated in writing to be for building fund purposes, a copy of the cover letter has not been produced. Given that -- (1) the \$150,000 contribution check was not specifically designated, on its face, for building fund purposes, in contrast to the first installment; (2) a copy of the cover letter required pursuant to corporate procedure has not been provided; and (3) Freddie Mac conspicuously failed to explain in its Submission whether it followed corporate procedure with respect to the payment -- on balance, the available information supports a finding

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- 1 that the \$150,000 may have been outside of the building fund exemption. Accordingly,
- 2 there is reason to believe that Freddie Mac violated 2 U.S.C. § 441b by making a
- 3 contribution to the Republican National Committee.

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